

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3124 OF 2006
IN
FIRST APPEAL NO.1585 OF 2006

Vijaykumar Phulchand Bafana ...Applicant

vs.

Ashok Raghunath Thombare and ors. ...Respondents

Shri A.B.Tanjane i/b Mr.R.B.Jagtap for the Applicant

Shri S.M.Kamble for Respondent No.1.

Shri R.M.Pethe i/b Mr.Rajesh Ketkar for Respondent Nos.4a and 4b.

Shri A.R.Patil for Respondent No.2.

CORAM: A.S.OKA, J.

DATE : JANUARY 18, 2007.

P.C.:

1. Rule. Shri Kamble waives service for the first Respondent. Shri Patil waives service for the second Respondent. Shri Ketkar waives service for Respondent Nos.4a and 4b. A suit for perpetual injunction and declaration filed by the Appellant has been dismissed. The Applicant claims to be a developer. According to the Applicant, the first Respondent executed a development agreement in his favour and has executed an irrevocable power of attorney in his favour to enable him to develop the property. The prayer for declaration is that the lease deed executed by the first Respondent in favour of the Second Respondent on 9th May 2001 and the development agreement and power of attorney executed by the second Respondent in favour of the third Respondent are illegal and not binding on the Applicant-Plaintiff.

2. The Applicant claims to be in possession of the plot in question on the basis of the alleged development agreement. Apart from the fact that development agreement may not be capable of being specifically enforced, the suit filed by the Applicant was not for specific performance of the development agreement. The finding of the trial court is that the Applicant was not in possession. Considering the frame of the suit of the Applicant and the finding recorded by the Trial Court, the Applicant is not entitled to any interim relief as prayed in this Application. Hence, Application is rejected.

3. However, it is made clear that all further development work carried on the suit plot will be subject to final outcome of the Appeal.

JUDGE